

1 UNITED STATES BANKRUPTCY COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 18-23538-shl

4 Adv. Case No. 20-06982-shl

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6 In the Matter of:

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8 SEARS HOLDINGS CORPORATION,

9

10 Debtor.

11 - - - - - x

12 KMART HOLDING CORPORATION, et al.,

13 Plaintiffs,

14 v.

15 WINIADAEWOO ELECTRONICS AMERICA INC.,

16 Defendant.

17 - - - - - x

18

19 United States Bankruptcy Court

20 300 Quarropas Street, Room 248

21 White Plains, NY 10601

22

23 December 21, 2022

24 2:17 pm

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1 B E F O R E :

2 HON SEAN H. LANE

3 U.S. BANKRUPTCY JUDGE

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1 HEARING re Omnibus Hearing

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3 HEARING re Doc. #10738 Application For Final Professional  
4 Compensation Of Weil, Gotshal & Manges LLP, As Attorneys For  
5 Debtors Period: 7/1/2022 To 10/31/2022,  
6 Fee:\$1,134,520.00, Expenses: \$3,802.26

7  
8 HEARING re Doc. #10532 Application For Interim Professional  
9 Compensation / Twelfth Quarterly Report Of Katten Muchin  
10 Rosenman LLP, As Special Avoidance Counsel For The Debtors,  
11 For Allowance Of Contingent Fees And Reimbursement Of  
12 Expenses For The Period From April 1, 2022 Through june 30,  
13 2022

14  
15 HEARING re Doc. #10533 Application For Interim Professional  
16 Compensation / Twelfth Quarterly Report Of Stretto For  
17 Allowance Of Contingent Fees And Reimbursement Of Expenses  
18 For The Period From April 1, 2022 Through June 30, 2022

19  
20 HEARING re Doc. #10735 Application For Final Decree /  
21 Liquidating Trustee's Motion For Entry of (I) Final Decree  
22 Closing Certain Of The Chapter 11 Cases And (IT) Granting  
23 Related Relief

1 HEARING re Adversary proceeding: 20-06982-shl Kmart Holding  
2 Corporation et al v. Winiadaewoo Electronics America Inc.  
3 Doc. #36 Motion To Compel / Motion Of Plaintiffs For Order  
4 (I) Enforcing Procedures Order Governing Preference  
5 Adversary Proceedings With Amounts In Controversy In  
6 Excess Of \$500,000 And (II) Granting Related Relief  
7

8 HEARING re Adversary proceeding: 20-06982-shl Kmart Holding  
9 Corporation et al v. Winiadaewoo Electronics America Inc.  
10 Doc. #41 Objection To Motion To Enforce Procedures Order  
11

12 HEARING re Adversary proceeding: 20-06982-shl Kmart Holding  
13 Corporation et al v. Winiadaewoo Electronics America Inc.  
14 Doc. #42 Reply In Support Of Motion Of Plaintiffs For Order  
15 (1) Enforcing Procedures Order Governing Preference  
16 Adversary Proceedings With Amounts In Controversy In  
17 Excess Of \$500,000 And (II) Granting Related Relief  
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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

2

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24 BY: PERRY R. CLARK

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1 ALSO PRESENT TELEPHONICALLY:

2 ROBERT A. BRADBURY

3 GAITANA JARAMILLO

4 WILLIAM MURPHY

5 ERIKA L. MORABITO

6 ANNE J. PENACHIO

7 GARY POLKOWITZ

8 PAUL KENAN SCHWARTZBERG

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P R O C E E D I N G S

THE COURT: Good afternoon. This is Judge Sean Lane in the United States Bankruptcy Court for the Southern District of New York and we're here for a 2:00 hearing in the Sears Holding Corporation Chapter 11 case. So, we'll start with appearances. Let me find out whose here on behalf of the Debtor.

MR. FAIL: Hi. Good afternoon, Judge. Garrett Fail, Weil, Gotshal and Manges on behalf of the bidding Trustee. Good afternoon.

THE COURT: All right. Good afternoon. I understand that one of the matters we have on deals with the adversary proceeding and so let me find out who's here on behalf of the Plaintiff in that adversary proceeding.

MR. BANICH: Yes, Your Honor. This is Terence Banich from Katten, Muchin, Rosenman in Chicago on behalf of the Plaintiffs.

THE COURT: Good afternoon. And on behalf of the Defendant in that proceeding?

MR. CLARK: Good afternoon, Your Honor. My name is Perry Clark. I represent the Defendant, WINIA Electronics America, Inc.

THE COURT: All right. Good afternoon. And let me get any other appearances for today's proceeding.

MR. ROSENMAN: Your Honor, Steven Reisman of

1 Katten Muchin Rosenman. I'm here with respect to the Katten  
2 and Stretto fee applications that are on -- or fee  
3 application court -- fee app that's on for today. And I'm  
4 joined by my partners Mr. Banich and my associates are  
5 Michael Rosella. I've promoted him a little too early.

6 THE COURT: All right. That's -- I'm sure that's  
7 not a problem from Mr. Rosella's point of view. Now, any  
8 other appearances?

9 MR. ROSELLA: Good afternoon, Your Honor. Michael  
10 Rosella from Katten Muchin Rosenman, (indiscernible) person  
11 just mentioned.

12 THE COURT: All right. Good afternoon to you.  
13 All right. So, with that, I will turn it over to Mr. Fail  
14 to start us off.

15 MR. FAIL: Thanks, Judge. We filed an agenda at  
16 Docket Number 10764, and I'll just run through the  
17 uncontested matters in that order. The first out -- the  
18 first item is a final application of Weil, Gotshal & Manges  
19 for fees and expenses incurred from July 1 through October  
20 31, 2022, a couple days after the plan went effective and  
21 the last day that these would be subject to court approval  
22 in these cases.

23 Your Honor will recall after taking over these  
24 cases that the Debtors were successful in negotiating a  
25 settlement and resolution of pending litigation. The funds



1 came in and the work done in this period included work to  
2 effectuate the effective date of the Chapter 11 plan for the  
3 Debtors in these cases. And you'll see later on, on the  
4 agenda, is the Liquidating Trustee's motion to close out  
5 certain of the cases to help clear the Court's dockets of  
6 matters that no longer need to (indiscernible).

7 THE COURT: All right. That all -- I appreciate  
8 the recap. And so, I did see that there was a certificate  
9 of no objection filed as to the Katten Muchin application.  
10 I didn't see -- I didn't see such thing for the Weil  
11 application, but I didn't see any objection. So, any --  
12 anything else that I wanted to address as to the uncontested  
13 fee matters?

14 MR. FAIL: No, Your Honor. I'd be happy to answer  
15 any questions. But otherwise, we'd request that the Weil,  
16 the Katten, and the Stretto matters be approved.

17 THE COURT: All right. Anybody wish to be heard  
18 in connection with these three fee matters? All right. Let  
19 the record reflect there is no one chiming in and also  
20 reflect that there, in fact, was no objections of any of  
21 these fee applications. I'm happy to grant them all. I  
22 find that the applications here are appropriate given the  
23 facts and circumstances of the case and applicable law. And  
24 I'm happy to approve them. And so, I will so order the  
25 record. You'll get the appropriate orders. But this order

1 into the record allows things to move forward while those  
2 written orders are pending.

3 And so, with that, Mr. Fail, I guess we can move  
4 on to II.

5 MR. FAIL: Thank you, Judge. II is the  
6 Liquidating Trustee's Motion to close the cases of 52 what  
7 we're referring to as subsidiary debtor cases. The Chapter  
8 11 plan was effective -- became effective. The plan was  
9 substantially consummated. All of the factors weigh in  
10 favor of closing these Chapter 11 dockets, the cases were to  
11 remind you, Your Honor, substantially -- consolidated for  
12 procedural purposes at the beginning of the case. That one  
13 main docket will remain docket will remain open so if the  
14 other Debtors need to access the Court for any remaining  
15 matters subsequent any reconciliation that might come before  
16 you. And this does not affect any adversary proceedings  
17 that will remain open (indiscernible) on the main case.

18 So, to cut down on U.S. Trustee fees,  
19 administrative burdens, and to clear out your docket, we  
20 would request that this motion be granted as well.

21 THE COURT: All right. Thank you very much.  
22 Anybody wish to be heard in connection with Liquidating  
23 Trustee's motion for a final decree closing certain of these  
24 Chapter 11 cases?

25 MR. FAIL: Judge, I just want -- I'd just note we

1 did file a certificate of no objection and it was a redline  
2 of a proposed order attached. Your Honor may recall in  
3 these cases, as part of the confirmation years ago, an  
4 administrative claims representative was appointed to assist  
5 and represent those creditors that were not paid in full  
6 during the cases, during the course of (indiscernible)  
7 served in that capacity. And we had in clarifying language  
8 to this order that we cleared, I think, responsibilities and  
9 duties were discharged on a go-forward basis. And better  
10 synced for service and just wanted to just point that out to  
11 Your Honor.

12 THE COURT: All right. That makes -- that makes  
13 sense. And I assume that you didn't hear from the U.S.  
14 Trustee's Office in connection with this particular motion.  
15 I ask because they oftentimes weigh in on these kinds of  
16 motions.

17 MR. FAIL: I see Mr. Schwartzberg's box on the  
18 screen, but we received no comments and no objections.

19 THE COURT: All right. Mr. Schwartzberg, do you  
20 have anything to add?

21 MR. SCHWARTZBERG: I have nothing, Your Honor.  
22 Paul Schwartzberg for the U.S. Trustee's Office. I have no  
23 objection.

24 THE COURT: All right. All right. I'm happy to  
25 grant this motion at ECF Number 10735. It is a not uncommon

1 kind of motion in a case involving this many different  
2 debtor cases to streamline at a certain point the debtors  
3 that need to remain in bankruptcy from those that don't, and  
4 thus, reduce some of the cost of being in bankruptcy, which  
5 is always a good idea. So, I'm happy to grant this motion  
6 and just to make sure we have a proposed order. Obviously,  
7 there's a redline version of that and I'll use that version.

8 So, that motion is granted. Next up.

9 MR. FAIL: Thank you, Judge.

10 THE COURT: So, we now segue to III, the adversary  
11 proceeding, which deals with the motion to enforce  
12 procedures dealing with arbitration. I've seen the motion.  
13 I've seen the opposition. I've seen the reply. And I  
14 confess, I spent some time debating what to do in a context  
15 of this. And so, in order to save a little bit of time and  
16 not set anybody up for -- to -- for a more heated colloquy,  
17 I just thought I would tell you where I am on this. And  
18 then you can argue whatever you'd like argue, and I'll hear  
19 from everybody. But I've been in your shoes in a former  
20 life. I always wanted to know what the judge was thinking  
21 if the judge had something in mind ahead of time, so I think  
22 it's only fair -- and in the spirit of the holidays, to do  
23 that.

24 So, the whole point of the order was to send cases  
25 to mediation in a case this large, to try to keep

1 administrative expenses down. And so, it's a fairly easy  
2 act by this Court to find cause to the extent that there was  
3 issues in timing in this case that didn't allow that process  
4 happen to let it happen now. There's clearly a lot of bad  
5 blood between these parties and I am aware of the discovery  
6 disputes that were on in front of Judge Drain as a  
7 reflection of that.

8           There were certainly plenty of missed  
9 opportunities here. I understand the response of the  
10 Defendant, which is so technically, this is how you could  
11 have done it and this, that, and the other thing. But I  
12 also understand that when people are getting along in cases,  
13 that's kind of how it's supposed to be. And there are lots  
14 of times when judge -- people say, we don't want to bring  
15 this to the judge. This is not the kind of thing we want to  
16 bring to the judge. It's a common discussion in the U.S.  
17 Attorney's Office (indiscernible) cases. Do we bring this  
18 to the judge? And the answer's, like, well, what's the  
19 reason to do that. Because the judge will assume that we're  
20 responsible adults and we can work out most of our problems.  
21 And that is true.

22           I will say that you always have to be careful when  
23 there are court ordered deadlines. At a certain point, you  
24 lose the ability to not bother me and that's fine. That's  
25 an occupational hazard on my part in taking this job. So, I

1 can never really blame somebody if you say, well, I had an  
2 emergency hearing that was requested on Friday that I had  
3 earlier today because somebody said, Judge, I have this  
4 problem. And I'm just -- I'm in a box and I need relief  
5 before Christmas. And I understand and that's part of the  
6 gig.

7 So, and perhaps it may have been, given the  
8 party's relationship, the better course to come and ask me  
9 for some sort of relief or modification of the order. But I  
10 understand people were trying to get along. And I'm not  
11 going to hold people trying to get along against them.  
12 That's how the system's supposed to work.

13 So, my inclination is -- well, I don't have a  
14 magic equity wand that I always tell people doesn't exist in  
15 bankruptcy. I do have an ability and discretion for good  
16 cause shown to amend an order like this and to do that  
17 because if that's what the order said, the case was supposed  
18 to be mediated, that's what the order said.

19 And if, because of the way the case unfolded,  
20 timing became problematic and then things descended into  
21 disagreement, that's a problem I actually can fix with the  
22 waive of then pen and just amend the order to say mediation  
23 has not taken place there -- for lots of reasons, discovery,  
24 this, that, and the other thing, and then things fell apart  
25 and to just reset the deadline for that. And sadly, I

1 understand it means that if people can't agree on things  
2 going forward, then they'll be back in front of me. And I'm  
3 certainly happy to make amendments to the regular procedures  
4 to account for the fact that people aren't getting along.

5 And if that means that you can't choose a  
6 mediator. Well, everybody can, you know, pick three names  
7 that they agree upon, submit them, and I'll pick one. Or if  
8 you can't even do that, you can each submit two and then  
9 I'll pick one from the four. And you don't even tell me who  
10 identified who and I'll just pick blind. But hopefully, it  
11 won't come to that because that's probably not the result.  
12 But I understand, I'm the option of last resort and the  
13 blunt instrument to deal with those kinds of things and  
14 that's fine.

15 So, I mention all this in the spirit of the  
16 holidays so we can avoid unnecessary acrimony and a  
17 detailing of a past history that probably all counsel would  
18 agree on one thing that they could probably live without  
19 reliving, again, this afternoon.

20 And so, I'm certainly happy to hear from anybody.  
21 If somebody wants to take a run at me to change my mind,  
22 that's fine. But that's sort of where I am. And I don't  
23 want to yell at anybody, and I don't want to start second-  
24 guessing all of you and getting into this -- these kinds of  
25 things. In a way, it's sort of any extension of discovery

1 disputes, there's almost nothing better than discovery  
2 dispute other than to say a fight about attorney's fee in  
3 bankruptcy.

4 So, I've already had a couple of those this week,  
5 so I'm trying to end on a positive holiday note. And so --  
6 so, that's where I am. And so, so I'll hear first from the  
7 Plaintiff. If -- I'm not going to award anybody any fees,  
8 so -- because the spirit of things sort of sides with the  
9 Plaintiffs. The technical aspects of complying with the  
10 order side with the Defendants. But again, putting the  
11 forest and the trees in context, the whole point of the  
12 order is to have a mediation. That's what should happen, so  
13 let's do that and I'll set dates for that to happen.

14 And so, with that, let me hear from the Plaintiff  
15 if there's anything you wanted -- you either want to  
16 convince me otherwise or anything you wanted to add, or a  
17 specific request that you had as to some relief to help  
18 things go more smoothly going forward.

19 MR. BANICH: Good afternoon, Judge. It's Terence  
20 Banich for the Plaintiffs. And I wanted to start by  
21 thanking Your Honor for those very helpful remarks, and  
22 particularly they'll spark the spirit of the procedures  
23 order and of the holidays, for that matter. Before I get  
24 into anything, I wanted to just clarify one thing. And  
25 that's that while there have been some discovery disputes



1 with the Defendant in the past history of this adversary,  
2 Mr. Clark, who represents the Defendant, we have gotten  
3 along quite well.

4 THE COURT: All right.

5 MR. BANICH: And I think Mr. Clark is a very able  
6 advocate. And we have not had the sort of, you know, spats  
7 that lawyers don't get along have. We -- it hasn't been  
8 like that at all. There just has been some, perhaps  
9 difficulty in communicating on some matters, maybe some, you  
10 know, genuine disagreements about what our burdens were in  
11 discovery. And it kind of snowballed into some other  
12 things.

13 THE COURT: All right. That can happen.

14 MR. BANICH: So, you know, we don't --

15 THE COURT: That can happen.

16 MR. BANICH: Yeah.

17 THE COURT: Again, I bore people with this story.  
18 Sometimes I have a box in my office of various mementos from  
19 my days in practice, partially to remind myself of the  
20 difficulty of being in practice. Right? It's not easy and  
21 when you're advocating on behalf of your client. And it  
22 could be a challenge. So, I'm happy to be able to try to  
23 let all of us move forward in a productive and peaceful way.  
24 And I'm happy to hear that you and Mr. Clark are getting  
25 along. That solves a lot of problems, and so thank you for

1 sharing that.

2 MR. BANICH: Of course. So, in terms of the  
3 relief, I hear -- heard your analysis, Judge, and we agree  
4 that the spirit of the procedures order, you know, requires  
5 among other things there to be a mediation or an attempt at  
6 it in good faith. We have been -- stood ready to do that  
7 since our first communication with Mr. Clark on the subject  
8 in October of 2021. We stand ready to do so today. And  
9 however, whatever procedural path Your Honor wishes to take  
10 to get to that result, we're obviously only too happy to  
11 agree to it.

12 Now, we haven't had the chance to discuss  
13 potential dates with Mr. Clark. So, I heard Your Honor say  
14 that you were going to set a date. But I --

15 THE COURT: Yeah, my thought would be that it's  
16 something that should happen in the next three months. That  
17 sounds about right given where you are, that you've done all  
18 the other work. And if you can't agree on a mediator, then  
19 you can just suggest some names and not identify who  
20 suggested who. And I'll pick one. And you can take some  
21 solace in the fact that I was on a panel dealing with  
22 mediation in bankruptcy court. And I was on it with an  
23 academic, which is good because they have a different  
24 perspective about these things. And a number of judges in  
25 the audience said, well, I don't require it when people

1 don't want to do it because I just find it's not worth it.  
2 And she, well, yeah, I can see that point of view, but  
3 studies show that the success in mediation does not, in  
4 fact, vary with whether people want to go to mediate or not,  
5 which was actually a surprise to me.

6 So -- and so, I think that's just something that -  
7 - to the extent that people have, anybody has any reluctance  
8 about mediation, you can share that tidbit or not with not  
9 your client if it helps to smooth the waters.

10 So, does a three-month deadline for having a  
11 mediation have sense?

12 MR. BANICH: To me, Your Honor, I think that's  
13 perfectly acceptable. Thank you.

14 THE COURT: All right. Anything else, counsel,  
15 before I hear from the other side.

16 MR. BANICH: No. No, Your Honor. Thank you for  
17 the time.

18 THE COURT: All right. Thank you. Mr. Clark,  
19 anything that you wanted to share?

20 MR. CLARK: Thank you, Your Honor. So, this will  
21 -- this -- you setting of the deadline to complete the issue  
22 will also operate to reset the other deadlines in the  
23 procedures order.

24 THE COURT: No.

25 MR. CLARK: The deadlines for the other --

1 THE COURT: No, it won't. That's a separate  
2 thing. If there's discover and people are fighting about  
3 discovery deadlines and cutoffs, you can try to work it out.  
4 And if you can't -- and if you can't work it out, I'm very  
5 likely to go along. If you can't -- if you can't work it  
6 out, then people -- we'll do the time-honored tradition of  
7 submitting letters and then we'll have a conference.  
8 Frankly, I will say -- and sometimes I regret making this  
9 offer. But I usually find that if a conference on discovery  
10 can avoid lengthy letter-writing campaigns, I always  
11 encourage to people to instead of writing the nastygrams  
12 that sort of happen in discovery disputes to just say,  
13 Judge, we need a conference. The vast majority of discovery  
14 disputes can be talked through during a conference.

15 And I always have those conferences with the  
16 understanding that everybody reserves their rights if  
17 there's a substantive legal issue that needs briefing, then  
18 you can say, Judge, we actually should brief this. And so,  
19 there are times when there's complicated privilege issues or  
20 things of that sort, so nobody will ever give up their right  
21 to legally brief something like that. But frankly, we all  
22 know most discovery disputes are not about that, they're  
23 about other things. And as somebody who was a litigator  
24 before taking this job and with 12-odd years on the bench, I  
25 -- you know, we can handle most discovery disputes by phone.

1           So, my thought would be just make sure to talk to  
2       each other ahead of time. If you have a discovery dispute  
3       you can call chambers. I try to schedule those, you know,  
4       within a day or two of getting the request. And so, I'm not  
5       trying to reset other deadlines. Frankly, the mediation, it  
6       doesn't really necessarily track other deadlines. And so, I  
7       understand there was a need -- there was a request for  
8       documents, which is you know, I guess part and parcel for  
9       understanding the other side's position. And that's fine.  
10      It sounds like you sorted through that.

11           But I'll request that you have a conference. And  
12      if you have a discovery issue, then just reach out to  
13      chambers. A one line, one sentence letter saying, Judge, we  
14      need a discovery conference, would suffice.

15           MR. CLARK: Yeah, no, I -- thank you, Your Honor.  
16      And I do appreciate your collaborative approach. Certainly,  
17      not all judges are like that. Only concern is that --

18           THE COURT: You can tell me whether it's wise or  
19      not, but we try.

20           MR. CLARK: No, I understand. I wouldn't -- yeah,  
21      I understand. My only concern is telegraphing that, you  
22      know, for example, there's a fact discovery put on. It was  
23      set to -- it's key to the conclusion of mediation. And  
24      there's an expert report, you know, deadline and an  
25      expert -- in fact, a position deadline that's key to the

1 completion of the engagement --

2 THE COURT: Okay. I think I get your drift. So,  
3 if they're separate and independent and they are what they  
4 are, that's fine. If you're -- if you have deadlines coming  
5 up that would be delayed because you say, we'll do the  
6 mediation first. That makes perfect sense to me. So, you  
7 know, what I'd say, work it out with the other side and say  
8 we want to rejigger the upcoming deadlines in light of the -  
9 - that we're going to take a hiatus -- essentially, a  
10 hiatus for a mediation, that's fine, completely makes sense  
11 to me.

12 MR. CLARK: Okay. So, those deadlines would just  
13 be extended commiserate with whether -- whether it would or  
14 --

15 THE COURT: Yeah, I mean, the idea behind  
16 mediation also is to save some money. We all know most  
17 civil disputes settle and the question is sort of when they  
18 resolve themselves. Each case is different, but the idea,  
19 hopefully, is to -- is to be able to save a little bit of  
20 money in the process. But that's fine. So, what I would  
21 say is the -- you could -- what I always like to do though  
22 in each case is have a scheduling order, so we all know  
23 where we are. And so, it -- with this sort of reopening of  
24 mediation, if you want to work together on some deadlines  
25 consistent with that, and you agree, submit it to me, and

1 I'm happy to so order it. We'll put it on the docket and  
2 that way everybody has something. Because I find life  
3 without a scheduling order is not a good place to be. So,  
4 it protects everybody.

5 So -- but again, it can be as formal or informal  
6 as you want. It can be, you know, a revised proposed  
7 scheduling order. It can be a letter saying you all agree  
8 these are the deadlines. And certainly, each case is  
9 different in terms of how much detail you have about  
10 specific discovery events such as provision of expert  
11 reports and things of that sort. But I'm happy to follow  
12 your lead on that.

13 I don't remember what the discovery -- what the  
14 order -- any scheduling order here, which obviously predates  
15 me, and I didn't preside over what those look like and how  
16 much detail's in there. But some cases, more detail's  
17 better than others. So -- but I'll be guided by your  
18 thinking on that -- your collective thinking.

19 MR. CLARK: Yeah. Just with the understanding  
20 that we are going to redo the scheduling order that we  
21 already have, we'll try to reach an agreement on redoing  
22 that.

23 THE COURT: All right. All right. Anything else,  
24 Mr. Clark?

25 MR. CLARK: No, Your Honor.

1 THE COURT: All right.

2 MR. BANICH: Your Honor, I just have one  
3 procedural --

4 THE COURT: Sure.

5 MR. BANICH: -- point to bring up before we move  
6 on. In terms of selecting the mediator, I'd just wish to  
7 point out that the procedures order that we've been talking  
8 about does require that the parties select a mediator from  
9 one of six people listed on Exhibit 3 to the procedures  
10 order. So, there's like a closed universe, technically, of  
11 these --

12 THE COURT: That's fine. I --

13 MR. BANICH: -- potential mediators?

14 THE COURT: -- I'm, yeah, I'm not trying to over -  
15 - I'm not trying to, other than reopen the ability to do  
16 this, I'm not trying to substantively amend the procedures  
17 order. That's fine. Thank you for that reminder. I was  
18 just speaking about mediation generally, the mediation drill  
19 that we have --

20 MR. BANICH: Yes, sir.

21 THE COURT: -- but that's fine. So, whatever the  
22 procedures orders say on that is fine. And obviously, to  
23 the extent that you all reach agreement about things -- I'm  
24 always happy to entertain that, but -- but yeah. So, choose  
25 a mediator and just get me -- get me something. Whether



1 it's a letter that has scheduling or a proposed revised  
2 scheduling order, whatever you think is easiest and most  
3 cost-effective, and I'll enter that. And I will consider  
4 today to be essentially an oral application as the deadlines  
5 are going to change given that you're going to go ahead with  
6 mediation. And I understand that so people cannot worry  
7 about that. If -- so, if there's a deadline, it's going to  
8 get blown in a month, you don't have to worry about that  
9 because I understand. You clued me in, so thank you.

10 Anything else from anyone?

11 MR. BANICH: No, sir. Thank you very much.

12 THE COURT: All right.

13 MR. CLARK: Nope, thanks Your Honor.

14 THE COURT: Thank you very much. I appreciate and  
15 I hope I've made things easier rather than more difficult.  
16 But I guess time will tell. But if you need anything,  
17 you'll let me know. Otherwise, I'll wait for a revised  
18 scheduling order, and we'll take it from there.

19 And with that, Mr. Fail, is there anything else on  
20 the agenda for today?

21 MR. FAIL: Just again, thank you. Happy Holiday  
22 and Happy New Year to you and chambers.

23 THE COURT: All right. Thank you very much.  
24 Happy Holidays to you all, you, and your families, and stay  
25 healthy. We hope -- and I'll mention this to counsel here

1 because I don't know if I've said this to any of you. We  
2 hope to be coming back in person. Certainly, my hope if the  
3 COVID numbers cooperate that we would have -- we'll be able  
4 to do that sometime, you know, say February or March,  
5 something like that. We'll all have to see because COVID  
6 has had a lot of surprises for all of us. And the idea  
7 would be better than all these circumstances, we default to  
8 in-person, but we'd always have a virtual option available  
9 for anybody who has any particular health concerns. We  
10 obviously don't want anyone to be in a bad by virtue of just  
11 having to show up in court.

12 So, that's the hope. But I'll keep everybody  
13 informed. And if anybody has any suggestions about that  
14 kind of stuff going forward, I always welcome informal  
15 comments. And I think I'm not alone, I think that's true  
16 for all my colleagues. So, feel free to reach out to me or  
17 our clerk of court or deputy clerk report if you have any  
18 ideas. We're trying to make this work the best for our  
19 customers, for folks who appear in front of us consistent  
20 with health and safety needs.

21 So, that's why I just figured I'd just clue you in  
22 where I -- I'm hoping to head. Knock wood, and we'll see --  
23 we'll see how it goes. But in the meantime, happy holidays,  
24 and be well.

25 MR. BANICH: Thank you, Judge.

1 MR. FAIL: Thank you, Your Honor.  
2 (Whereupon these proceedings were concluded at 2:45 PM)  
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I N D E X

RULINGS

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

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Date: December 27, 2022